

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4391 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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RAFIQ RAMJU KANCHA BAFAN

Versus

DIST.MAGISTRATE KUTCH

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Appearance:

MR SHAKEEL A QURESHI for Petitioner  
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the order dated 5-5-96 passed by the District Magistrate, Kutchh- Bhuj whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 10-5-96 and since then the petitioner is under detention

lodged at Sabarmati Jail at Ahmedabad.

2. This Special Civil Application was filed on 26-6-96 and on 27-6-96 rule returnable on 30-7-96 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 4 criminal cases were registered against the petitioner for the offences under the Bombay Prohibition Act and all these cases are pending trial. Besides these, the detaining authority has taken into consideration statements made by 6 witnesses against the petitioner's anti social and criminal activities. The petitioner has been found to be engaged in the business of unauthorised liquor and has been detained as a bootlegger.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has laid stress on the point that no case of breach of public order is made out.

5. In view of the decision dated 4-10-96 in Special Civil Application No.3879/96 it is clear that the allegations and materials relied upon by the detaining authority against the petitioner do not constitute a case of breach of public order. At the most it can be said to be a case of breach of law and order. The detention order, therefore, deserves to be set aside on this ground alone.

6. Accordingly the Special Civil Application is allowed and the impugned detention order dated 5-5-96 passed by the District Magistrate, Kutchh-Bhuj is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.